Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of	)	
	)	IB Docket No. 97-142
Rules and Policies on Foreign Participation in the U.S. Telecommunications Market	)	

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

SITA (Société Internationale de Télécommunications Aéronautiques) hereby opposes the "petition for partial reconsideration" filed by Aeronautical Radio, Inc. ("ARINC") in the above-captioned proceeding.[1/] ARINC asks the Commission to reconsider its finding that the Aeronautical Enroute Service is a "basic telecommunication service that falls within the class of services covered by the [World Trade Organization] Basic Telecom Agreement."[2/] ARINC supports its request by repeating arguments that were fully considered and properly rejected by the Commission in the *Foreign Participation Order*. ARINC's warnings that allowing competition in the U.S. aeronautical enroute services market would jeopardize public safety and national security are totally without merit.

1/ Aeronautical Radio, Inc., *Petition for Partial Reconsideration*, IB Docket No. 97-142 ("*ARINC Petition*").

2/ *Foreign Participation in the U.S. Telecommunications Market*, IB Docket 97-142, Report and Order and Order on Reconsideration, FCC 97-389, (rel. Nov. 26, 1997)("*Foreign Participation Order*") at ¶ 117.

ARINC is wrong in claiming that "the public interest in maintaining competition among air carriers and reducing barriers to entry into the air transport industry would be threatened" if the Aeronautical Enroute Service is treated "as a commercial service."[3/] On the contrary, the introduction of competition will produce lower rates for aeronautical enroute services and prompt service innovations, thus lowering air transport industry costs. The problem is that ARINC acts both as manager of the aeronautical enroute spectrum and as service provider, and thus has the power to decide both whether another service provider such as SITA will be permitted to compete with it, and if so, under what terms and conditions. This obvious conflict of interest must be eliminated in the rulemaking the Commission plans to undertake to reform the Aeronautical Enroute Service licensing regime.[4/]

ARINC's arguments in this proceeding are impossible to square with the fact that ARINC itself is seeking aggressively to enter other countries' aeronautical enroute service markets in order to compete directly with SITA. Even as it pursues these opportunities abroad, ARINC currently is engaged in a campaign of misinformation intended to create anxiety and concern among U.S. airlines about the effect of the Commission's *Foreign Participation Order*. ARINC's transparent objective is to preserve its monopoly in the U.S. market.

The Commission should reaffirm its determination that aeronautical enroute services are basic telecommunications services subject to the WTO Basic Telecom Agreement, and its

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3/ *ARINC Petition* at 2.

4/ *Foreign Participation Order* at ¶ 118.

decision to apply the same entry standard to those services that it adopted in the *Foreign Participation Order* for other basic telecommunications services under Section 310(b)(4) of the Communications Act of 1934. ARINC's petition should be denied forthwith.

I. Aeronautical Enroute Services Are a "Basic" Service Subject to the WTO Basic Telecom Agreement and the U.S. Commitments Thereunder

ARINC contends that aeronautical enroute services fall outside the scope of the WTO Basic Telecom Agreement and the U.S. commitments thereunder because they are "private, enhanced" services.[5/] ARINC was wrong when it made the exact same argument in its reply comments on the Commission's *Foreign Participation Notice,*[6/] and ARINC is wrong now. As the Commission stated in the *Foreign Participation Order*,

> Contrary to ARINC's assertions, the WTO Basic Telecom Agreement encompasses both private and commercial telecommunications services. Most WTO Members, including the United States, committed to provide market access to "mobile services," of which aeronautical enroute and fixed services is a subset.[7/]

ARINC attempts to establish a "distinction between public and private services" that simply does not exist under the WTO Basic Telecommunications Agreement.[8/] The scope of the agreement encompasses *all* basic services, whether public or private. The European Communities' commitment notes explicitly that both public and private services are covered

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5/ *ARINC Petition* at 1.

6/ *Foreign Participation in the U.S. Telecommunications Market,* Order and Notice of Proposed Rulemaking, 12 FCC Rcd 7847 ("*Foreign Participation Notice*"); ARINC Reply Comments (filed Aug. 12, 1997).

7/ *Foreign Participation Order* at ¶ 117.

8/ *ARINC Petition* at 6.

by the Agreement.[9/] Numerous country commitments distinguish between specific obligations as they apply to private and public services.[10/] As SITA previously has noted, it would have been unnecessary for WTO members to make such explicit distinctions if private services fell outside the scope of the agreement.[11/]

ARINC contends that "basic" telecommunications services include only those services that are "offered to the public generally."[12/] If ARINC were correct -- which it is not -- this interpretation would render the WTO Basic Telecom Agreement a nullity. It would, for example, exempt from WTO obligations all "carrier's carrier" services, since they are not offered to the public generally. This giant loophole would allow any country to circumvent its WTO commitments and the GATS trade disciplines with respect to virtually any basic service, simply by adopting a carrier's carrier model for the provision of that service. Were the Commission to attempt to exclude aeronautical enroute services from the scope of the United States' WTO commitments on the basis of the public-private distinction proposed by ARINC, other countries would be certain to follow suit, thus eroding the value of the WTO Basic Telecom Agreement, and potentially destroying it. Such an outcome clearly would not serve the U.S. public interest.

9/ *See*, WTO Basic Telecommunications Agreement, European Communities and Their Member States Schedule of Specific Commitments, April 11, 1997, GATS/SC/31/suppl.3.

10/ *See, e.g.,* Commitments of Brazil, Romania, Israel, Czech Republic, Poland, Bulgaria, Bangladesh, Grenada, and the Dominican Republic. GATS/SC/31/suppl.3.

11/ *See, Ex Parte* Submission of SITA in IB Docket No. 97-142 (filed Sept. 16, 1997) at 2.

12/ *ARINC Petition* at 6.

ARINC's contention that aeronautical enroute services are "enhanced," rather than basic, services is pure sophistry.[13/] Under the Commission's rules, enhanced services are provided on an unregulated basis and are not subject to licensing requirements.[14/] Only basic services are subject to licensing. If aeronautical enroute services are enhanced services, then ARINC holds licenses for a service that is not subject to licensing. In fact, aeronautical services are subject to licensing requirements because they are basic and not enhanced services. Also, the Commission's rules define an enhanced service as a service that is "offered over common carrier transmission facilities."[15/] Since no common carrier services are used in the provision of aeronautical enroute services, such services cannot, by definition, be enhanced.

That ARINC may offer certain data services that "involve code, speed, protocol and format conversions" in no way alters the fact that the underlying transmission service over which such services are offered is a basic telecommunications service. It is the underlying basic service that is subject to Commission licensing requirements, and to the United States' commitments under the WTO Basic Telecom Agreement. SITA intends to seek licenses to provide this underlying basic service, pursuant to the entry standard adopted in the *Foreign Participation Order.*

13/ *Id.* at 7.

14/ *See* 47 C.F.R. § 64.702 (a).

15/ *Id.*

II. There Is No Justification For Excluding Aeronautical Enroute Services From WTO Obligations on Public Safety or National Security Grounds

ARINC also rehashes its claim that public safety and national security considerations justify exempting aeronautical enroute services from application of the United States' commitments under the WTO Basic Telecom Agreement.[16/] Exceptions to WTO obligations on public safety or national security grounds are permitted only if "necessary."[17/] In fact, the Commission's existing rules and plenary powers are amply sufficient to protect these important interests. ARINC fails to demonstrate any need for additional rules and requirements to be adopted by ARINC in its capacity as manager of the aeronautical enroute spectrum.

ARINC claims that it "provides the U.S. Government with U.S. control over" aeronautical enroute facilities.[18/] SITA does not wish in any way to diminish the U.S. Government's control over aeronautical enroute services. The Commission can and should exercise this control directly through license conditions imposed on aeronautical enroute service providers, and through its other powers. This control should not, and need not, be exercised through the incumbent service provider, with which SITA wishes to compete directly in the provision of aeronautical enroute services to aircraft operators in the U.S.

16/ *ARINC Petition* at 2-6.

17/ *See* General Agreement on Trade in Services, April 15, 1994, 33 L.L.M. 1167, art XIV (1994).

18/ *ARINC Petition* at 5.

The U.S. Government's "control over and access to these critical services"[19/] is not based on the nationality of the operator of the services, but rather on the fact that the services are subject to U.S. laws and government police powers. The presence of an alternative provider of aeronautical enroute services in the U.S. would in no way diminish or compromise this control. In "national emergencies, terrorist attacks, military maneuvers, airplane malfunctions, and crash investigations,"[20/] the Government's ability to rely on redundant aeronautical enroute service networks will affirmatively serve national security interests. Further, allowing competition in aeronautical enroute services will in no way hinder the Civil Reserve Air Fleet program.

In summary, ARINC has failed again to raise any legitimate public safety or national interest concerns that would justify excluding aeronautical enroute services from the scope of application of the United States' WTO commitments. The Commission should reaffirm its conclusion that "[c]onsideration of whether a particular investment presents a very high risk to competition and other public interest factors, including input from Executive Branch agencies regarding matters uniquely within their expertise, will be sufficient to protect the public interest."[21/]

19/ *ARINC Petition* at 5.

20/ *Id.*

21/ *Foreign Participation Order* at ¶ 117.

III. Conclusion

The Commission correctly concluded that aeronautical enroute services are basic telecommunications services subject to the United States' WTO commitments. ARINC's arguments to the contrary were wrong the first time, and they are still wrong. ARINC simply is seeking Commission protection from competition in the U.S., even as it enters the aeronautical enroute services market abroad. The Commission should ensure that the benefits of competition are realized as soon as possible in the U.S., by rapidly commencing a proceeding to eliminate the "one licensee per location" rule, which confers an archaic regulatory monopoly in aeronautical enroute services on ARINC.

SITA respectfully urges the Commission to deny ARINC's petition for partial reconsideration of the *Foreign Participation Order*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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